

Appl. No. : **10/747,812**
Filed : **December 29, 2003**

REMARKS

The foregoing amendments and the following remarks are responsive to the January 12, 2006 Office Action. Claims 1-3 and 6-30 were considered by the Examiner. Applicants have canceled Claim 25. Applicants have amended Claims 1, 10, and 22. Support for amended Claims 1, 10, and 22 can be found in paragraph [0036] of the specification. Thus, Claims 1-3, 6-24, and 26-30 are currently pending. Please enter the amendments and reconsider the claims in view of the following remarks:

Response to Rejection of Claims 10-21 Under 35 U.S.C. § 102(b)

In paragraph 3 of the Office action, the Examiner rejected Claims 10-21 under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 5,049,349 to McCullough et al. (“McCullough”).

A claim is anticipated only if each and every element as set forth in the claim is found wither expressly or inherently described, in a single prior art reference. Verdegaal Bros. v. Union Oil of Cal., 814 F.2d 628, 631 (Fed. Cir. 1987). A claim element is not “inherent” in the disclosure of a prior art reference unless extrinsic evidence clearly shows that missing descriptive matter is necessarily present in the thing described in the reference. In re Robertson, 49 U.S.P.Q. 1949 (Fed. Cir. 1999). “Inherency, however, may not be established by mere probabilities or possibilities.” Id. at 1950-51.

Each and every element of Claim 10 is not explicitly or inherently disclosed in McCullough. Claim 10 recites, *inter alia*, that the apparatus comprises:

a filling system comprising:

a filling machine; and

a closing or capping machine.

The Examiner cites column 6, lines 34 to column 7, line 3 as disclosing that a capping or closing machine closes a filled flexible pouch. Neither the cited portion of McCullough or any other part of the specification discloses that a filling system comprises a filling machine and a closing or capping machine. McCullough discloses that “an interlock substantially prevents pouring spout 15 from rotating when a screw cap (not shown) or other closure means is releasably engaged thereon.” Applicants submit that this describes features of the neck portion, but does not disclose the recited feature of Claim 10, namely that a filling system comprises a

Appl. No. : **10/747,812**
Filed : **December 29, 2003**

filling machine and a closing or capping machine. Therefore, Applicants respectfully request that the Examiner withdraw this rejection.

Moreover, Applicants have amended Claim 10 to additionally recite that “the handling system places the flexible pouches in the rigid container.” McCullough fails to disclose this limitation. McCullough describes that “the heated and softened body of a preform ... is introduced within the erected carton.” See col. 2, lines 61-64. Thereafter, the preform is blow molded into the carton. Thus, Applicants respectfully submit that amended Claim 10 is patentably distinguishable from McCullough because McCullough does not disclose that the handling system places the blow molded, flexible pouches in the rigid container.

Each of Claims 11-21 depend from amended Claim 10, and therefore include all of the limitations of Claim 10, as well as other limitations of particular utility. Claims 11-21 are thus patentably distinguished over McCullough for at least the reasons set forth above with respect to Claim 10, as well as for novel and nonobvious features recited therein.

Response to Rejection of Claims 22 and 28 As Anticipated By Bettle

In paragraph 4 of the Office action, the Examiner rejected claims 22 and 28 under 35 U.S.C. § 103(a) (this is believed instead to be 102(b)) as anticipated by U.S. Patent No. 5,049,349 to Bettle et al. (“Bettle”). Applicants have amended Claim 22 and Applicants submit that amended Claim 22 includes limitations not disclosed by Bettle. For example, Bettle fails to disclose or suggest placing a filled pouch, which is not self-supported, in a rigid container. Therefore, Applicants respectfully submit that amended Claim 22 is patentably distinguishable over Bettle, and Applicants respectfully request that the Examiner withdraw the rejection of Claim 22 and pass the claim to allowance.

Claim 28 depends from Claim 22, and therefore includes all of the limitations of Claim 22, as well as other limitations of particular utility. For at least the reasons stated above with respect to amended Claims 22, Applicants submit that Claim 28 is patentably distinguishable from Bettle. Therefore, Applicants respectfully request that the Examiner withdraw the rejection of Claims 22 and 28, and pass these claims to allowance.

Rejection of Claims 1, 6-7, and 25-27 Under 35 U.S.C. § 103 (a)

In paragraph 6 of the Office action, the Examiner rejected Claims 1, 6-7, and 25-27 under 35 U.S.C. § 103(a) as obvious over Bettle in view of U.S. Patent No. 5,487,257 to Domeier et al.

Appl. No. : **10/747,812**
Filed : **December 29, 2003**

(“Domeier”). Claim 25 has been canceled, but its limitations have been imported into amended Claim 22. Applicants have amended Claims 1 and 22, and requests reconsideration in light of the amendments.

Bettle, alone or in combination with Domeier, does not teach or suggest each and every limitation of amended Claims 1 and 22. For example, Claim 1 recites, *inter alia*, placing the filled pouch that is not self supportive in a rigid container. Similarly, amended Claim 22 recites placing the flexible pouch that is not self-supportive in a rigid container.

Bettle fails to teach or suggest that flexible pouches can be used or made in the disclosed process. The term container as defined in Bettle “is intended to encompass bottles, jars, and like receptacles for containing fluent materials.” See Bettle, col. 6, lines 39-41. Bottles, jars, and the like receptacles would only encompass rigid containers that are self-supporting and thus would not ever rely upon an outer rigid container for support. As such, Bettle does not disclose a flexible pouch that is not self-supportive.

As the Examiner recognized in paragraph 6 of the Office action, Bettle does not disclose further processing of the containers post discharge. Applicants submit that Bettle also does not disclose placing a filled, flexible pouch in a rigid container whether prior to or after discharge.

Domeier also does not disclose placing flexible pouches that are not self-supportive in rigid containers. Domeier describes that articles are delivered to the machine by an article conveyor, which transports bottles. See col. 1, lines 54-56. In contrast to amended Claims 1 and 22, the articles described by Domeier are rigid, self-supportive bottles. See, e.g., the bottles shown on the conveyor in Figure 1. Domeier also teaches in Figure 1 that more than one rigid, self supportive bottle can be placed in a box. Because more than one rigid bottle can be stored in the box, the box does not provide self-support to the container. Therefore, Applicants submit that Domeier does not disclose or suggest a flexible pouch that is not self supportive.

Moreover, there is no teaching or suggestion in Domeier to modify the teachings of Bettle to place a flexible pouch that is not self-supportive in a rigid container. Domeier discloses that flat conveyors 9 and 10 are used to transport the articles to and from the packing machine. See Figure 1; col. 1, lines 54-62. As discussed in Bettle, the preforms and blown containers are under positive control throughout the process of blow molding, sterilizing, filling, and capping. See col. 3, lines 29-42. Bettle discloses that the elimination of non-positive control mechanisms such

Appl. No. : **10/747,812**
Filed : **December 29, 2003**

as "linear conveyors, and transfer mechanisms for them," results in reduced machine jams and increased efficiency of the process. See col. 6, lines 19-23. Thus, a person having ordinary skill in the art would not combine the efficient process of Bettle with the inefficient use of conveyors as described in Domeier.

In addition, Bettle teaches that reliability of the process is enhanced by integrating disparate items of machinery. See col. 2, lines 60-66. To enhance the efficiency of the process, Bettle discloses an integrated system that includes a preheat oven, blow molder, a sterilizer, a filler, and a capper. See col. 4, lines 1-4. In view of this disclosure, a person having ordinary skill in the art would not combine Bettle, which teaches integrating machinery, with Domeier, which teaches using a separate, non-positive control packing system. Therefore, Applicants respectfully submit that the Examiner has not established a *prima facie* case of obviousness because there is no suggestion or motivation in Bettle or Domeier to modify Bettle or combine the reference teachings to meet the limitations as recited in amended Claims 1 and 22.

Accordingly, Applicants respectfully submit that Claims 1 and 22 are allowable over the combination of Bettle and Domeier. Claims 6-7 and 26-27 depend from Claims 1 and 22, and further define the invention defined in Claim 1 and 22. Thus, Claims 6-7 and 26-27 are also patentably distinguished over Bettle and Domeier for at least the reasons set forth above with respect to Claims 1 and 22, as well as for other novel and nonobvious features recited therein.

Rejection of Claims 2-3 and 23-24 Under 35 U.S.C. § 103 (a)

In paragraph 7 of the Office action, the Examiner rejected Claims 2-3 and 23-24 under 35 U.S.C. § 103(a) as obvious over Bettle in view of U.S. Patent No. 3,818,785 to Wakabayashi et al. ("Wakabayashi"). Each of Claims 2-3 depends from amended Claim 1, and each of Claims 23-24 depends from amended Claim 22. Thus, Claims 2-3 and 23-24 include all the limitations of amended Claim 1 and amended Claim 22, as well as other limitations of particular utility. Applicants submit that amended Claims 1 and 22 includes limitations not disclosed or suggested by the combination of Bettle and Wakabayashi. For example, both Bettle and Wakabayashi fail to disclose or suggest placing the filled, flexible pouch that is not self-supportive in a rigid container as recited by amended Claims 1 and 22. Thus, Claims 2-3 and 23-24 are also patentably distinguishable over Bettle in view of Wakabayashi.

Appl. No. : 10/747,812
Filed : December 29, 2003

Rejection of Claims 8-9 and 29-30 Under 35 U.S.C. § 103 (a)

In paragraph 8 of the Office action, the Examiner rejected Claims 8-9 and 29-30 under 35 U.S.C. § 103(a) as obvious over Bettle in view of U.S. Patent No. 5,540,879 to Orimoto et al. ("Orimoto"). Each of Claims 8-9 depends from amended Claim 1, and each of Claims 29-30 depends from amended Claim 22. Thus, Claims 8-9 and 29-30 include all the limitations of amended Claim 1 and amended Claim 22, as well as other limitations of particular utility. Applicants submit that amended Claims 1 and 22 includes limitations not disclosed or suggested by the combination of Bettle and Orimoto. For example, both Bettle and Orimoto fail to disclose or suggest placing the filled, flexible pouch that is not self supportive in a rigid container as recited by amended Claims 1 and 22. Thus, Claims 8-9 and 29-30 are also patentably distinguishable over Bettle in view of Orimoto.

For the foregoing reasons, Applicants submit that Claims 1-3, 6-24, and 26-30 are in condition for allowance, and Applicants respectfully request such action. Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 7 June 2006

By:



Karoline A. Delaney
Registration No. 44,058
Attorney of Record
Customer No. 20,995
(949) 760-0404

2421011/knr
030606